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In the Supreme Court of the United States

OCTOBER TERM, 1971

AMOCO PRODUCTION COMPANY, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 22-29) is reported at 444 F. 2d 328. The Board's decision in the unfair labor practice proceeding (Pet. App. 10-21) is reported at 179 NLRB No. 30, and its decision in a related representation proceeding (Pet. App. 5-10) is not reported.

JURISDICTION

The judgment of the court of appeals (Pet. App. 30) was entered on July 14, 1971. The petition for a writ of certiorari was filed on September 18, 1971. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the National Labor Relations Board abused its discretion to determine appropriate bargaining units by establishing a unit limited to the Farmington Area of the Company's Denver Division, rather than one covering the entire Denver Division.

STATUTE INVOLVED

Relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. 151, *et seq.*), are set forth at Pet. App. 33. Also relevant is:

> Section 8(a) It shall be an unfair labor practice for an employer—
>
> * * * *
>
> (5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9(a).

STATEMENT

A. The Representation Proceeding

Petitioner, formerly Pan American Petroleum Corporation and Stanolind Oil and Gas Company (the

"Company"), is engaged in the exploration for, and production of, oil and gas, with principal offices in Tulsa, Oklahoma (Pet. App. 6; R. 7, 12).[1] On October 14, 1968, the Independent Oil Workers Union, Local 16 (the "Union") filed a representation petition with the Board's Regional Director, seeking to represent a unit of all hourly-rated producing, operating, and maintenance employees in the producing department of the Company's Farmington Area (R. 9). The Company opposed the petition, contending that only a unit encompassing the producing department for the Company's Denver Division, which included the Farmington Area, was appropriate (R. 8, 10).

With respect to the unit issue, the evidence adduced showed the following: The Company's domestic operations were divided into four divisions—New Orleans, Houston, Fort Worth, and Denver (R. 7, 13). The Denver Division had four departments; its Producing Department was divided into three geographic districts, the North, Northwest, and South Districts (R. 19-21), and in turn the South District was subdivided into three Areas, one of which (the Farmington Area) was headquartered in Farmington, New Mexico (R. 21-23).

The Farmington Area covered Arizona, the western half of New Mexico, and part of Utah and Colorado (R. 22-23). This area was established as a "District" in January 1961, and was redesignated an

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[1] "R." refers to the appendix to the briefs filed in the court below.

"Area" and transferred to the Denver District in 1965. Though some 28 changes in the geographical or organizational composition of the Denver Division occurred from 1960 to the date of the Board hearing, the boundaries and organization of the Farmington Area remained relatively stable. (R. 28-29, 103-109.) There were no other work locations in the Denver Division within 200 miles of Farmington (R. 83, 115).

Operations in the Farmington Area were conducted by a staff of 8 supervisors and a crew of 25 hourly paid employees in four job classifications (R. 25-26, 74, 181). The area was under the supervision of an Area Superintendent responsible for its operations (R. 68-70). Employees in the area worked under the direct supervision of an area foreman and several field foremen (R. 68-70). The initial steps of the grievance procedure involving these employees were administered within the area (A. 70). Of the 46 (approximately) transfers of hourly-rated employees that were made between areas in the Denver Division in the three years proceeding the hearing, only three were into or out of the Farmington Area, and those were at the request of the transferee (R. 26-27, 71). There was no history of collective bargaining on a division basis in the Denver Division (Pet. App. 8, n.2).

On this evidence, the Regional Director concluded that the employees in the Farmington Area comprised "a stable and identifiable group of employees with common interests," and thus constituted an appropriate unit for bargaining (Pet. App. 8, n.2). The Board

denied the Company's request for review of the Director's decision (Pet. App. 14). The Union won the ensuing election, and was certified as the employees' representative (R. 208-210).

B. The Unfair Labor Practice Proceeding

When the Company subsequently refused to bargain, the General Counsel of the Board, upon charges filed by the Union, issued a complaint alleging that the Company's action violated Section 8(a)(5) and (1) of the Act (R. 212-215). The Company's answer contested the validity of the unit determination (R. 215-235). The General Counsel thereupon moved for judgment on the pleadings on the ground that the unit issue had previously been litigated and determined in the representation case (R. 235-239). The Board granted the General Counsel's motion, issued a decision finding that the Company had violated the Act by refusing to bargain with the Union, and ordered the Company, *inter alia*, to bargain with the Union on request (Pet. App. 10-21). The court of appeals enforced the Board's order (Pet. App. 22-30).

ARGUMENT

Section 9(b) of the Act empowers the Board to "decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by the Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof * * *." In this case, the Board determined that an

area-wide, rather than a division-wide, unit was appropriate. That conclusion necessarily turns on the particular facts presented, and hence does not warrant review by this Court.

In any event, the court below correctly concluded that the Board's decision was a reasonable exercise of its broad discretion (see *Packard Motor Car Co.* v. *National Labor Relations Board*, 330 U.S. 485, 491) to determine an appropriate bargaining unit. The Farmington Area has a stable and identifiable work force, as shown by the fact that only a few employees had been transferred in or out in recent years, and even these transfers were due to employee requests, not Company needs. The Area superintendent and his foremen supervised the day-to-day operations of some 28 employees and initially handled grievances. And the Farmington Area headquarters is located some 200 miles from any of the Company's other work locations in the Denver Division. Unlike in other Divisions, there has been no history of division-wide bargaining in the Denver Division, or a request for representation on such basis; indeed, the Board has approved less than division-wide plant units in the Denver Division.[2] These factors fully support the Board's finding that the Farmington Area is an appropriate bargaining unit despite some centralized control from the Divisional office.[3]

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[2] *Stanolind Oil and Gas Co.*, 98 NLRB 973, enforced, 208 F. 2d 239 (C.A. 10); *Stanolind Oil and Gas Co.*, 116 NLRB 1208.

[3] See *National Labor Relations Board* v. *Groendyke Transport, Inc.*, 417 F. 2d 33, 34-35 (C.A. 10), certiorari denied,

There is no basis for petitioner's assertions (Pet. 7-8) that, in handling the instant case, the Board changed its policy with respect to the Company's bargaining units without articulating adequate reasons for its decision, and in effect gave controlling weight to the extent of organization. The cases cited by petitioner (see Pet. 4-5) where the Board disapproved area-wide bargaining for certain Company employees did not involve the Denver Division. Moreover, the stability of the Farmington Area work force distinguishes the present case; as the court below noted (Pet. App. 28-29), this same consideration led the Board to approve (and the court to sustain) less than division-wide units in other cases involving the Company and its Denver Division (see n. 2, *supra*). The Board's reasons for doing so in this case are fully articulated (see Pet. App. 6-8, 13-16), and make plain that the extent of the Union's organization was not given controlling weight.

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397 U.S. 935; *Mountain States Telephone and Telegraph Co.* v. *National Labor Relations Board*, 310 F. 2d 478, 479-480 (C.A. 10); *Banco Credito y Ahorro Ponceno* v. *National Labor Relations Board*, 390 F. 2d 110, 112 (C.A. 1), certiorari denied, 393 U.S. 382; *National Labor Relations Board* v. *Li'l General Stores, Inc.*, 422 F. 2d 571, 574 (C.A. 5).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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